

QUARTERLY PERFORMANCE REPORT #2

STRENGTHENING ELECTORAL ADMINISTRATION IN UKRAINE

Submitted to:

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Submitted by:

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STRENGTHENING ELECTORAL ADMINISTRATION IN UKRAINE

(MARCH 15 – JUNE 15, 2004)

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Agreement No. 121-A-00-04-00701-00

*Period of Performance: 12/15/03-12/14/06,
Amount: \$4,480,893*

The activities described below are listed under the two Program Components, or tasks, specified in the Cooperative Agreement and the Work Plan for Year One.

I. PROGRAM ACTIVITIES

TASK ONE: IMPROVING THE LEGAL AND REGULATORY FRAMEWORK FOR THE ELECTORAL PROCESS

As in the previous quarter, SEAUP staff worked closely, though informally, with the Parliamentary Temporary Commission on Amending the Constitution (PTTC) on drafting and review of election legislation. SEAUP focused its efforts on the new draft Presidential Election Law and the then draft Parliamentary Election Law. Less attention was paid to the draft Local Election Law, due to a lack of time and the fact that it is unlikely to survive long in its present form, due to the large number of internal contradictions and the likelihood of a constitutional challenge before it could take effect on October 1, 2005.

SEAUP DCOP Dr. Volodymyr Kovtunets and Activity Managers (AMs) Oleksandr Barabash and Oleksandr Vorobyov were particularly active in the parliamentary context at the very beginning of the reporting period, to help ensure that the draft presidential and parliamentary laws were adopted with the greatest number of provisions that had undergone unofficial but substantive review by the SEAUP team. In this endeavor the AMs were greatly assisted by MPs Yurii Kliuchkovskyy and Ivan Zayets, both members of the PTTC.

Outcome A. New Presidential Election Law passed with inclusion of numerous provisions developed by SEAUP

On March 18, 2004, the Parliament adopted a new Presidential Election Law far superior to its predecessor, which had regulated the 1999 presidential election. Adoption of the law, which was signed by President Leonid Kuchma shortly thereafter, marked an important step towards assuring the integrity of the presidential electoral process. While clearly any law is only as valuable as the manner and extent to which it is enforced, the new Presidential Election Law nonetheless was an achievement in and of itself.

SEAUP is proud to report that the work of our DCOP and AMs was not in vain. Amongst the numerous progressive provisions in the new Law, we have identified the following that are directly attributable to the project team, i.e. which were included in the Law practically word for word as recommended by our experts:

1. Provisions granting leave to appeal lower court decisions in election cases — this is a potentially heavyweight provision, depending on how well the campaign teams use it in an actual campaign. The old law provided no leave to appeal, which was both extremely problematic from the standpoint of international (OSCE) standards and frankly demoralizing to candidates' legal teams. The fight to include these provisions, adapted from the current Parliamentary Election Law, was fierce. SEAUP AMs provided the kind of legislative wording that made the provision palatable to virtually every actor on the PTTC. (Articles 91 – 105)
2. Provisions governing the formation and clarification of voter lists, in particular those giving the Territorial Election Commissions (TECs) supervisory responsibility over the voter list formation and clarification process. As a result of careful drafting by SEAUP experts, and skillful legislative information efforts by both opposition and party of power MPs, the new Law has increased the capability, responsibility and therefore the importance of TECs with regard to the voters list. (Articles 31 – 35)
3. Provisions regulating candidate nomination were substantially improved, while provisions for revocation of a candidate's registration were drastically curbed. Furthermore, the CEC is not empowered under the new Law to revoke a candidate's registration unilaterally. This authority was given to the Supreme Court. (Articles 44 – 56)
4. Provisions regulating the rights, responsibilities and conduct of official (domestic) observers were written to make it much more difficult for election commissions to eject or ban official observers from being present during commission activities. Now banning may take place only if an observer "systematically" violates the law. Furthermore, official observers may no longer be banned from a polling station on Election Day under any circumstance.

Outcome B. New Parliamentary Election Law passed with inclusion of provisions developed by SEAUP experts

On March 25, 2004, the Parliament adopted a new Parliamentary Election Law. Generally speaking, the new Law is a further advance on its predecessor, passed in October 2001, under which the March 2002 parliamentary election was conducted. While the Law's principal feature is the establishment of a 100 percent proportional representation system, it also includes a variety of provisions that improve administration.

Among key provisions that were developed by SEAUP experts are the following:

1. A new provision that aims to increase the transparency of campaign financing. Under the new Law any party or bloc passing the minimum 3% threshold and obtaining seats in Parliament will have its registration deposit returned and a portion of its authorized campaign expenses will be reimbursed from the state budget. (Articles 46 & 79)
2. Provisions governing the formation and clarification of voter lists, in particular those giving the Constituency Election Commissions supervisory responsibility over the

process of voter list formation and clarification. It also simplifies the CoECs' task of ensuring that voters are included in one voters list only. (Articles 31 – 35)

3. Provisions that could have been used (abused) to cancel candidates' registration were removed after considerable effort by SEAUP experts acting in concert with friendly MPs.

Outcome C. Support provided to legislative development process through seminars on specific election law issues and problems

During the reporting period, in addition to work done via direct discussion and communication with MPs by SEAUP staff, we organized a number of “regular” legislative development events as part of our official Parliamentary event schedule.

1. **Round Table on Gender Quotas in the Election Process** — Held on April 15 with the Open Society Foundation, this event looked into the full range of gender and gender integration issues as they bear on elections and political processes. MPs representing both the parliamentary majority and opposition parties, gender experts, think tank representatives and political party staffers participated. They discussed pending legislation that would introduce gender quotas into parliamentary candidate lists, in the context of the current state of women's (and men's) political participation. CEC Member Maryna Stavnyychuk gave a lecture on constitutional aspects of the potential introduction of gender quotas, and gender expert Tamara Melnyk presented a comparative study of European Union member states' gender integration practices in the political/elections area.
2. **Parliamentary Conference on Legal Regulation of Presidential Elections in Ukraine** — Held on April 28 in partnership with Parliament's State-Building and Local Self Government Committee and the Indiana University Parliamentary Development Project (PDP), this event provided MPs, CEC members, think tank representatives, legislative staffers and others with the opportunity to discuss the newly adopted Law on the Election of the President of Ukraine, adopted on March 18, 2004.

Debate on both the substance of the law and its legislative development was at times very intense. Importantly, MPs from both the parliamentary majority and the opposition spoke frankly on the law's various provisions. Additional flavor was added by former CEC member Vasyl Spivak, who, while a serving commissioner, was very cautious with his words, but who on this occasion was highly critical of issues that the new law's co-authors had not addressed. MP Yuryy Kliuchkovskyy, a key co-author of the law, was subjected to many questions to which no good answer existed, other than that the law was a compromise.

In the end, conference participants noted that while there was room for improvement in a variety of areas, in particular by permitting non-partisan observers, the new law was far better than its predecessor, which was a very broadly written document subject to varying interpretations depending on the reader's political interests.

3. **Parliamentary Conference on Achieving Suffrage Rights for Ukrainian Voters Abroad** — This event was held on May 25, 2004, together with the Parliamentary

European Integration Issues Committee and the Election Law Institute. Also present were representatives of the Central Election Commission (including Yuryy Danylevskyy, the CEC member in charge of voting abroad issues), Ministry of Foreign Affairs, Ministry of Justice, Presidential Administration, World Congress of Ukrainians, political parties, think tanks and other NGOs. The 72 participants discussed the current state of the law vis a vis organizing voting opportunities for Ukrainians staying abroad; past practice, in particular the 1999 presidential election and the 2002 parliamentary general election; and potential barriers to suffrage for Ukrainians abroad.

As a result of the recommendations adopted by the Conference, in July – August 2004 DA/SEAUP will conduct an STTA Study of Voting Abroad and prepare a set of recommendations that the GOU can use to improve and enhance the scale of voting abroad by Ukrainians beginning with the 2004 presidential election.

Outcome D. 2004 Legislative Strengthening Grant Program Underway

Throughout the reporting period, SEAUP staff, led by our AM for Grant Programs, Serhii Kalchenko, and with Home Office participation and support (SEAUP Project Coordinator Ambassador George Jones, Executive Associate John Garcia), developed an RFA for small grants to support enhancement of the legislative framework for the 2004 Presidential Election specifically and Ukrainian presidential elections generally.

Following approval by USAID of the grant selection criteria and permission to move ahead despite lack of formal recognition by the GOU, an announcement was made in mid-April through the www.vybory.com website as well as newspaper advertisements and our email list serve. A Selection Committee consisting of DA staff and outside experts reviewed the four applications submitted and recommended that a grant be awarded to the Razumkov Centre.

After negotiations a grant was awarded to the Razumkov Centre in the amount of \$16,850 to conduct a legislative development project to include:

1. Developing analytical materials on problematic areas of the current law and regulations for presidential elections in Ukraine;
2. Organizing and conducting a Round Table in Kyiv to present and discuss the results of analytical research;
3. Disseminating the results of the analytical research including through publication thereof in a special issue of the grantee's National Security & Defense magazine;
4. Organizing and conducting three focus-groups in Kyiv, Donetsk, and Lviv to discuss the effectiveness (enforcement) of the current legislative framework for presidential elections; and
5. Analyzing focus group information and make recommendations for urgent amendments or changes in practice to relevant target audiences.

Following approval of the grantee's work plan, work began and the first tranche of funding was released to the grantee.

Other Activities in Task One — In addition to the activities and outcomes described above, SEAUP experts also worked to inform MPs on the election-related aspects of the constitutional

reform process. Bill #4105, which would have dramatically changed the balance of power between the President, Government and Parliament, was defeated in Parliament by a six-vote margin on April 8, 2004. If adopted, Bill #4105 would have reduced the powers of the Ukrainian presidency in manifold ways and might have undermined the legitimacy of the constitutional process in Ukraine, which is on the verge of a major presidential election. Its proponents vowed to restore the issue to the parliamentary agenda later this spring. SEAUP will continue monitoring this issue as appropriate.

TASK TWO: STRENGTHENING ADHERENCE TO THE LEGAL FRAMEWORK AND TO INTERNATIONAL STANDARDS BY THE UKRAINIAN GOVERNMENT, POLITICAL PARTIES AND CANDIDATES

Outcome A. Political Party Lawyer Training Activity Conducted

On May 22-23, SEAUP, in cooperation with ABA/CEELI and the International Republican Institute, conducted a two-day specialized seminar for lawyers and legal department staff from 24 major and minor political parties spanning the Ukrainian political spectrum. AM Oleksandr Barabash coordinated the event and was ably supported by DCOP Kovtunets and AM Kalchenko. (AM Vorobyov was conducting PSC training in Odesa on these dates and was therefore unavailable.) ABA/CEELI provided a cost-share contribution as well a very able instructor in the person of Yevhen Radchenko, that organization's Election Projects Coordinator. IRI provided party development expert Vadym Naumov.

The training consisted of lectures and breakout group discussions on the main provisions and topical areas of the new Presidential Election Law. Unlike election commissioner training seminars, which are highly focused on identifying and solving specific legal problems, this event was broader and designed to make the national party structures aware of the need to direct and coordinate their lawyers and other individuals within their legal departments in the event that they participate in the presidential campaign. True to the Development Associates approach to Ukraine election assistance, discussion focused on the operation of the laws rather than on hypothetical situations or non-legal campaign issues better addressed elsewhere.

While the vast majority of participants came away very satisfied with the exchange of ideas that took place and the materials provided them by SEAUP and our co-organizers, this event was an eye-opener to our experts, in that the large majority of "serious" Ukrainian political parties were just beginning to consider legal strategies (including legal training for party activists) at the time of the event. The level of previous legal knowledge and preparation by the participants was lower than the organizers expected. Indeed, although most parties sent practicing lawyers or at least individuals with legal education or experience, it is clear that much work remains to be done, and that unlike "pure party development", which has been heavily covered by such organizations as IRI and NDI over the past decade, there is plenty of room to provide focused continuing legal training and education to political party lawyers, not necessarily limited to specific election contexts.

It should be noted that apart from serving as an excellent introduction of the SEAUP mission to the Ukrainian political parties, this event provided our experts and partners with information on how best to draft training and other materials for party and candidate teams, which will be of much use in the immediate months following the event.

Outcome B. By-election Commissioner Training Continued

Odesa — Parliamentary Single Mandate Constituency # 136 – May 22-23.

AM Oleksandr Vorobyov and his training partner Nadia Molochko conducted four PSC training seminars for this parliamentary by-election. Local organizer support was provided by AM Vorobyov's longtime training partner Oleksandr Holokoz. The number of participants was 398, representing the major candidates in the race with the exception of candidate Kisse, whose headquarters refused to accept an invitation from the local organizer (a later invitation was accepted, and training was provided separately by AMs Vorobyov and Barabash, after the end of the reporting period). 300 participants (the original planned number of trainees) received packets of materials including EP3-era publications such as the Law on Election of People's Deputies of Ukraine; excerpts from other applicable laws; a Q&A for PSCs designed in 2002 but just as useful until a new parliamentary election law takes effect on October 1, 2005; and copies of a Brief Guide for Official Observers at Parliamentary Elections.

Karlivka (Poltava Oblast) — Parliamentary Single Mandate Constituency #151 – June 11 – 13.

DCOP Kovtunets and his training partner Prof. Volodymyr Kampo conducted PSC training seminars for this parliamentary by-election. The local organizers included representatives of Mercy and Health, a local NGO well-regarded in the region by political leaders despite its seeming narrow focus on charity. A total of 5 seminars were held with 426 participants representing all the major candidates. Local government representatives also attended a number of the seminars. 350 participants (the original planned number of trainees) received packets of materials. The Constituency Election Commission functioned poorly and did nothing to promote the training activities despite telephone requests from the CEC to this effect.

Outcome C. Election Commissioner Training Curricula and Materials Development Underway

Throughout the latter half of the reporting period, SEAUP staff laid the foundation for two major election training programs: Territorial Election Commissioner (TEC) training (end of July – mid-September) and Polling Station Commissioner (PSC) mass training, to be conducted by our NGO grantees from late August through early October.

Specifically, in late April a working group composed of DCOP Kovtunets and the AMs was formed to prepare TEC and PSC training curricula and materials. AM Barabash was charged with overseeing drafting and production. COP Bachynsky served as liaison with the OSCE and other implementers, while DCOP Kovtunets undertook CEC liaison on this matter. As of the end of the reporting date, the TEC Unified Training Manual draft had been prepared and circulated internally and to the OSCE. Comments had been received and a final draft was in preparation.

At the end of the quarter, the PSC Unified Training Manual was at a conceptual stage. While it will in many respects be similar to its sister publication, it will be more focused.

Similarly, efforts were underway by mid-April to locate a qualified production company for the Election Commissioner Training Video planned for circulation amongst candidate teams and election commissions to reinforce the PSC mass training to be provided by SEAUP grantees. After extensive enquiries SEAUP settled on the Center for Ukraine Reform Education (CURE), an “anchor” NGO in the public information and advocacy communications area based in Kyiv.

Finally, SEAUP continued development of an FAQ/distance learning course for election commissioners to be posted at www.vybory.com.

Outcome D. PSC Mass Training Program Grant Competition Conducted

In April – May, SEAUP prepared a mass training program, modelled on a similar program implemented by DA’s predecessor project, EP3, and to be conducted by sub-grantee NGOs, to train some 100,000 Polling Station Commissioners (PSCs) in the months prior to the 2004 Presidential Election according to a standardized curriculum and unified training materials provided by SEAUP. It is expected that trainees will comprise up to 20% of all PSCs to serve at the election. The relevant RFA was prepared in consultation with Home Office and other USAID implementing partners.

In mid-May, following approval by USAID of grant selection criteria and permission to move ahead despite the lack (at the time) of formal recognition by the GOU, a grant competition was announced. In the ensuing weeks SEAUP received 23 written questions regarding various aspects of the RFA and program from interested Ukrainian NGOs. Written responses to all questions were distributed on May 28 and posted to www.vybory.com.

On June 14, 2004, a Selection Committee met to discuss the applications submitted. Of seven applications the Committee recommended that DA consider grant awards to the following Ukrainian NGOs:

1. Committee of Voters of Ukraine
2. Znannia Association
3. Center for Political Education
4. Institute of Politics
5. Secretariat of the Freedom of Choice Coalition

Negotiations with the above NGOs were begun immediately and were underway at the end of the reporting period.

Outcome E. Judicial Education Grant Program Underway

As with the legislative strengthening grant program, SEAUP prepared a judicial continuing education grant program (to facilitate discussion by judges of the proper application of election laws during the presidential election). An RFA was prepared in close consultation with our Home Office.

Following approval by USAID of grant selection criteria and permission to move ahead despite lack of formal recognition by the GOU, an announcement was made in mid-April through the www.vybory.com website as well as newspaper advertisements and our email list serve. A

Selection Committee consisting of DA staff and outside experts reviewed the two applications submitted and recommended that a grant be awarded to the Kharkiv-based Institute of Applied Humanitarian Research (IAHR). After a series of negotiations a grant was awarded to IAHR in the amount of \$79,970.

IAHR is tasked, in brief:

1. To set up an expert group of well-experienced and qualified trainers, including judges of the Supreme Court & courts of appeal, law professors and associate professors;
2. To develop working materials on the provisions of the Presidential Election Law and other laws, including the Code of civil Procedure;
3. To conduct 24 regional seminars for judges of the courts of appeal and local courts; and
4. To conduct a conference for judges at the final stage of project (after the presidential election).

Following approval of the grantee work plan, work began and the first tranche of funding was released to the grantee. The first seminars were scheduled for after the end of the reporting period.

Other Activities in Task Two

Election Observation and Analysis — SEAUP AMs Barabash and Kalchenko observed the April 18, 2004, Mukachevo Mayoral Special Election. A Field Report was then submitted to USAID. SEAUP also prepared a translation of the parliamentary hearings on this controversial election, and circulated it within the Kyiv implementer community and to USAID. Further, SEAUP AMs observed the parliamentary by-election in Parliamentary Constituency #136 on May 27-30 (see Election Update #4 at www.vybory.com).

Ukraine Election Law Summer School 2004 — Preparations were underway throughout the latter half of the reporting period for the 2004 Ukraine Election Law Summer School. Gender Issues and Research AM Halyna Senyk was charged with coordinating this activity. Following a range of site visits, a venue was selected at the Vorzel Cardiological Sanatorium at Vorzel, approximately 40 kms. from the center of Kyiv. A curriculum and agenda were prepared based in part on the successful EP3 Election Law Summer School 2003. Participants were selected by two tracks: a SEAUP-administered Open Competition, and a CEC-administered Election Law Paper Competition

The majority of student participants were selected via an application-based open competition advertised on www.vybory.com, other Internet resources, and announcements posted at leading Ukrainian universities with law, political science and other social science departments. 149 applications were submitted for the Open Competition. Each application was independently graded by an in-house Selection Panel. Panel members reviewed applications according to the following standardized criteria, developed back in 2003 for the first Ukraine Election Law Summer School:

- ▶ Education and academic performance;
- ▶ Research work and publications;

- ▶ Experience in election participation (as a candidate, campaign team staff member, or election commission member);
- ▶ Experience in political party work;
- ▶ NGO experience;
- ▶ Short essay on election law and processes; and
- ▶ Recommendations of election law specialists.

Invitations were also made to the ten awardees and other top participants in a competition for election law papers for students and aspirants, conducted by the Central Election Commission and the Ministry of Education and Science, with SEAUP participation. Invitations were based on recommendations of the competition committee.

SEAUP also invited a range of Ukrainian and international election experts to participate as lecturers/instructors at the School. The School will be held on July 3 – 9, 2004 (next reporting period).

II. ADMINISTRATIVE, LIAISON AND OTHER ACTIVITIES

A. PROJECT REGISTRATION AND ACCREDITATION EFFECTED

Following signature of a new Memorandum of Understanding (MOU) on elections assistance by USAID and the CEC on March 26, DA/SEAUP began the registration application process. Registration was obtained on May 14, 2004. Thereafter SEAUP applied for accreditation, which was obtained on June 7.

B. KYIV OFFICE FULL TIME STAFF POSITIONS FILLED

On May 11, 2004, DA/SEAUP hired Inna Demchuk, formerly of the Ukrainian Legal Foundation, as the Assistant Grants Manager. Ms. Demchuk brings years of project and grant management experience to the project and performs full back-stop duties for Serhii Kalchenko, our AM for Grant Programs.

On April 26, DA/SEAUP retained Ivanna Yaremenko, formerly of IREX, as a bi-lingual Office Secretary. Ms. Yaremenko provides the full gamut of secretarial as well as certain program assistant services to the AMs and the COP.

At the very end of the reporting period, DA/SEAUP retained Maryna Selivanova as a temporary Senior Program Assistant. Ms. Selivanova had served in such a position in EP3, and is presently studying at the Peace and Conflict Studies Graduate Program at the University of Tromso. She will be with SEAUP through mid-August. Upon her departure she will be duly replaced.

C. WEBSITE DEVELOPMENT

During the reporting period our Web Administrator and DCOP collaborated on developing the project web-site. We will launch this website with its new look in the next quarter, and the old EP3 website will be placed in an archived sub-section.

D. ELECTION LAW/ISSUE ANALYSIS FOR USG

Throughout the reporting period, project AMs analyzed a variety of legislative developments within the VR, including the transition of the Central Election Commission from initial information gathering on potential CEC candidates, through exploration of the potential new dynamics within the CEC following approval of new members by the VR. Analysis was provided to USAID both verbally and in writing at various junctures. Topics included the CEC, constitutional reform, and election law issues. We worked in coordination with PDP, sharing resources and information as appropriate. See our Election Updates for further information (four were issued during the reporting period and posted at www.vybory.com).

COP Yarema Bachynsky also participated in numerous implementer/NGO meetings and an election briefing at USAID for a Congressional Delegation that visited Kyiv during the reporting period, presenting current information on election issues and potential election scenarios.

E. ANALYSIS AND INFORMATION FOR OTHER US ELECTION PROJECT IMPLEMENTERS

Throughout the reporting period, SEAUP participated in PDP's monthly parliamentary assistance coordination meetings. Special legislative updates were prepared, presented and distributed at the meetings held in March, April and May of the reporting period.

F. DONOR/IMPLEMENTER COORDINATION.

During the reporting period, project representatives participated in approximately fifteen meetings with OSCE, Freedom House, IRI, NDI, Internews, ABA/CEELI and other implementers, as well as in meetings with Ukrainian think tanks such as the Razumkov Centre, Election Law Institute, Democratic Initiatives Foundation, Agency for Legislative Initiatives (ALI), others, on the entire range of election-related issues, including the nexus between election administration, monitoring and voter education, as well as the role of the Exit Poll in assessing the quality of election administration.

Throughout March, April and May, DCOP Dr. Volodymyr Kovtunets participated in a series of roundtables on campaign finance held jointly by the Freedom of Choice Coalition and ALI at Parliament. Other AMs also participated in events held by a variety of Ukrainian NGOs, including those implementing USAID-funded election-related activities.

III. FINANCIAL REPORT

Contractor Name: Development Associates, Inc.
Cooperative Agreement No. 121-A-00-04-00701-00
Quarterly Financial Report, Cumulative through 6/30/04

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|------------------------------|----------------|
| Authorized Expenditures: | \$4,480,893.00 |
| Actual Expenditures to Date: | \$ 385,638.93 |
| Balance Remaining: | \$4,095,254.07 |